

APPENDIX E

PUBLIC NOTICE AND COMMENTS RECEIVED ON FIRST DRAFT EA



DEPARTMENT OF ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

January 19, 2005

Planning, Environmental, and Regulatory Division
Environmental Analysis and Compliance Branch

Dear Interested Party:

The Tulsa District has prepared an Environmental Assessment to assess the environmental and socioeconomic effects of the reallocation of approximately 300,000 acre-feet of water from hydropower storage to water supply storage at Lake Texoma, Oklahoma and Texas. The Environmental Assessment was developed in accordance with the National Environmental Policy Act, implementing regulations issued by the Council on Environmental Quality, and the U.S. Army Corps of Engineers Regulations, Part 230, Policy and Procedures for Implementing the National Environmental Policy Act. It was determined that this action will cause no significant adverse impacts on the natural or human environment.

An electronic copy of the Draft Environmental Assessment and Finding of No Significant Impact, on compact disc, is enclosed for your review and comments. Comments should be submitted within 30 days from the date of this letter to the Tulsa District, Corps of Engineers, ATTN: Environmental Analysis and Compliance Branch, 1645 S. 101st E. Avenue, Tulsa, Oklahoma 74128.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephen L. Nolen", is written over a horizontal line.

Stephen L. Nolen
Chief, Environmental Analysis
and Compliance Branch

Enclosure



DEPARTMENT OF ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

February 23, 2005

Planning, Environmental, and Regulatory Division
Environmental Analysis and Compliance Branch

Dear Interested Party:

The Tulsa District has received a request to extend the formal comment period for the Environmental Assessment to assess the environmental and socioeconomic effects of the reallocation of approximately 300,000 acre-feet of water from hydropower storage to water supply storage at Lake Texoma, Oklahoma and Texas. The Environmental Assessment was developed in accordance with the National Environmental Policy Act, implementing regulations issued by the Council on Environmental Quality, and the U.S. Army Corps of Engineers Regulations, Part 230, Policy and Procedures for Implementing the National Environmental Policy Act.

This letter is to notify interested parties of the decision by the Tulsa District to grant this extension. Comments should be submitted on or before April 7, 2005, to the Tulsa District, Corps of Engineers, ATTN: Environmental Analysis and Compliance Branch, 1645 S. 101st E. Avenue, Tulsa, Oklahoma 74128.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Nolen", is written over a horizontal line.

Stephen L. Nolen
Chief, Environmental Analysis
and Compliance Branch

Enclosure

IES

The Paris News

Friday, January 21, 2005 • Page 6

It's decision to extend ape victims, drug users

er nations. Much of Australia and Brazil had guidelines call- pe victims to receive y drug treatment to ie AIDS virus. such as iserts, New York and land came up with policies for treating ns at risk of contract- while some cities, San Francisco, 1 "post-exposure" for treating gay men, prostitutes and intravenous drug users. "While prudish political appointees delayed the CDC release by four years, thousands of unnecessary HIV infections may have occurred," said California Assemblyman Paul Koretz, who sponsored a bill two years ago calling on state health officials to make AIDS drugs available to people exposed though non-work activities.

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**Announcing: COMMENT PERIOD
DRAFT ENVIRONMENTAL ASSESSMENT**
as related to the
**Draft Environmental Assessment of the Lake Texoma
Storage Reallocation Study, Lake Texoma, Oklahoma
and Texas**
in compliance with
The National Environmental Policy Act
**FORMAL COMMENT PERIOD: January 21, 2005
through February 21, 2005**

The Draft Environmental Assessment addresses the environmental and socioeconomic effects of the reallocation of approximately 300,000 acre-feet from hydropower storage to water supply storage at Lake Texoma. The comment period is a continuation of public involvement used to develop the Draft Environmental Assessment. The public is invited to review the Draft Environmental Assessment and make comments. A copy is available at the following locations:

Denison Public Library
300 W Gandy St
Denison, TX 75020

Robert L. Williams Public Library
323 W Beech St
Durant, OK 74701

Written comments and questions will be addressed in the Final Environmental Assessment; to be included, comments and questions must be received prior to the close of the formal comment period. Comments and questions about the Draft Environmental Assessment or the comment process can be directed to:

Mr. Stephen Nolen
Chief, Environmental Analysis & Compliance Branch
Tulsa District Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK 74128-4629
Phone: 918-669-7660
Fax: 918-669-7546
E-Mail: Stephen.L.Nolen@usace.army.mil



Oklahoma Archeological Survey

THE UNIVERSITY OF OKLAHOMA

January 25, 2005

Stephen L. Nolen
Chief, Environmental Analysis
and Compliance Branch
Department of the Army
Corps of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, OK 74128-4609

Re: Environmental Assessment of the Reallocation of Approximately 300,000
acre feet of water from hydropower storage to water supply storage at Lake
Texoma, Oklahoma and Texas.

Dear Mr. Nolen:

I have reviewed the above referenced document and concur with the findings pertaining to cultural resources. The assessment accurately interprets our earlier comment that reallocation involves no new construction and no change in flood pool levels and consequently no new effect to cultural resources within the Oklahoma portion of Lake Texoma. Thus, we have no objection to implementation of this reallocation.

This review has been conducted in cooperation with the State Historic Preservation Office, Oklahoma Historical Society.

Sincerely,

Robert L. Brooks
State Archaeologist

Cc: SHPO



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services

222 S. Houston, Suite A
Tulsa, Oklahoma 74127

October 5, 2004

In Reply Refer To:
FWS/R2/OKES/texomareallocationletter

Colonel Miroslav P. Kurka, District Engineer
Attn: Planning, Environmental, and Regulatory Division
U.S. Army Corps of Engineers
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Dear Colonel Kurka:

The U.S. Fish and Wildlife Service (Service) has reviewed a U.S. Army Corps of Engineers' (Corps) proposal to study the reallocation of water storage at Lake Texoma to increase the water supply storage, primarily for municipal use. The proposed study was included in your biological assessment dated November 20, 2003, and was considered part of the Corps' proposed action in the draft biological opinion for your actions on the Arkansas, Canadian, and Red Rivers. The list of species protected by the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) provided for that formal consultation is still accurate and compliance with Section 7 of the ESA has been addressed in the draft biological opinion.

Assuming water demands for municipal use stay near current levels and Lake Texoma water levels will not be affected; we do not anticipate any federally-listed species to be adversely affected by the proposed reallocation of water storage. However, if demand for municipal water from Lake Texoma increases, we see potential for impacts to recreational use and fish and wildlife resources in the area near the reservoir and the Red River downstream. Municipal use usually has a very high priority relative to other uses and high demands during periods of low inflows could result in lower water levels and compromises for other uses. Management of national wildlife refuges, state wildlife management areas, and mitigation provided in compliance with the Fish and Wildlife Coordination Act and National Environmental Policy Act could be affected. If municipal water use is expected to increase, we recommend that the Corps address these potential impacts before approving any reallocations that may affect reservoir water levels. Consultation should be initiated with us and the state natural resource agencies to avoid any impacts to fish and wildlife resources.

Thank you for providing the opportunity to comment on the proposed study. Please coordinate any comments or information with Mr. Kevin Stubbs at 918-581-7458 ext 236.

Sincerely,

Jerry Brabander
Field Supervisor

cc: ARD-ES, Attn: Dean Watkins, U.S. Fish and Wildlife Service, Albuquerque, NM
Director, ODWC, Attn: Natural Resources Division, Oklahoma City, OK
Director, Texas Parks & Wildlife Dept., Austin, TX

TEX-LA ELECTRIC COOPERATIVE OF TEXAS, INC.

P.O. BOX 631623 • NACOGDOCHES, TEXAS 75963-1623 • 936/560-9532 • FAX 936/560-9215
(STREET ADDRESS: 2905 WESTWARD DRIVE • NACOGDOCHES, TEXAS 75961)

April 6, 2005

Stephen L. Nolen
Chief, Environmental Analysis and Compliance Branch
U.S. Army Corps of Engineers, Tulsa District
1645 South 101st East Ave.
Tulsa, OK 74128-4609

RE: Draft Environmental Assessment – Lake Texoma Reallocation Study –
Comments of Tex-La Electric Cooperative of Texas, Inc.

Dear Mr. Nolen:

Tex-La Electric Cooperative of Texas, Inc. ("Tex-La") appreciates this opportunity to provide comments on the Draft Environmental Assessment ("DEA") associated with the proposed reallocation of 300,000 acre-feet of water in Lake Texoma from hydroelectric power production to water supply storage. Tex-La and other interested stakeholders were previously granted an extension of time until April 7, 2005, to submit comments on the DEA.

Tex-La is a generation and transmission electric cooperative that purchases power at wholesale and resells it to member cooperatives for distribution to ultimate consumers in eastern Texas. Under a March 13, 2000 Power Sales Contract with the Southwestern Power Administration ("SWPA"), Tex-La and Rayburn Country Electric Cooperative, Inc. ("Rayburn Country") collectively purchase all of the hydroelectric power generated at Denison Dam, which impounds Lake Texoma. (Tex-La's share of the hydro output is 39.25%; Rayburn Country's share is 60.75%.) Tex-La has a direct interest in the proposed water storage reallocation to the extent that it would impact the quantity, the cost or the scheduling of hydropower generation at Denison Dam.

Tex-La has concerns with both the premature timing of the DEA and certain substantive deficiencies in the document. Tex-La shares and supports the comments that are being separately submitted by SWPA. The following specific observations are intended to supplement and amplify the points raised by SWPA.

Timing of DEA and Reallocation Study – As a general matter, we believe the DEA should be withdrawn at this time and reissued – with necessary modifications – only after the Corps of Engineers ("Corps") has completed its ongoing Reallocation Study for Lake Texoma. It is Tex-La's understanding that the reallocation study will examine in detail the technical and economic issues associated with the proposed reallocation. The Corps (and its EA contractor) cannot produce a complete and properly informed EA until the results of the reallocation study are established, because a number of those results form necessary predicates to the environmental analysis.

In particular, we do not believe the EA can adequately address all pertinent impacts unless a reallocation study is completed that addresses the following topics, among others:

- Identification and analysis of the demand for water supply from Lake Texoma
- Analysis of all water supply alternatives considered, including flood control storage, ground water, conservation storage, other surface water projects, as well as one or more alternative municipal diversion points from the Red River below Denison Dam
- Economic and financial analysis of water storage options, including costs of treatment, conveyance, and compensation to hydroelectric beneficiaries for lost benefits
- A determination of impacts (benefits and revenues forgone) to hydropower and flood control, including analysis of hydroelectric capacity and energy losses to consumptive uses
- Analysis of replacement costs of lost hydroelectric capacity and energy
- Analysis of measures necessary to make Lake Texoma water suitable for municipal purposes (*i.e.*, potable water), and costs thereof

The DEA not only does not have the benefit of the reallocation study results, it does not even acknowledge the existence of an ongoing study.

Section 1 – Purpose, Need and Scope – The DEA contains no meaningful analysis of the need for 300,000 acre-feet of storage for consumptive uses. The DEA merely states (at p.1), “This project is needed to meet the expanding municipal and industrial water supply demands that are a result of population growth in the region.” While Tex-La does not object to implementing the congressionally authorized reallocation to the extent there is legitimate demand, the DEA should identify potential contractors and the timing of their needs over the coming 10-year period.

From participation in local coordination meetings related to Lake Texoma, Tex-La is aware of only one pending request for 50,000 a.f. of additional water supply, by the Greater Texoma Utility Authority. The Oklahoma Water Resources Board has indicated during these meetings that it cannot foresee a date for utilization of its 150,000 a.f. Although Congress has authorized a reallocation of up to 300,000 a.f., the Tulsa District needs to explain why a DEA is being prepared now covering the entire authorized reallocation, when the reality is that there will be a demand for only a fraction of that storage in the foreseeable future. The EA’s analyses are bound to be stale and no longer valid by the time most of the 300,000 a.f. is contracted for, if ever.

Section 2 – Alternatives – The DEA examines only two alternatives: No Action and the Proposed Action (reallocation of the entire 300,000 a.f.). The National Environmental Policy Act (“NEPA”) and the Corps’ regulations require, however, that the Corps “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” (42 U.S.C. § 4332(2)(E); *see also* ER 200-2-2, § 10.b). The EA should examine *all* reasonable alternatives, including reallocation in increments as demand develops; water supply from other sources, such as neighboring utilities, ground water, and alternative surface water supplies; diverting water for municipal uses below the Denison Dam tailrace; and reallocation from flood control as well as hydropower storage.

Section 3 – Proposed Action – The DEA states (at p.4) that, “The hydropower storage proposed for reallocation has not been used for hydropower generation in the past.” This statement is so plainly and fundamentally inaccurate that it clouds the credibility of the DEA as a whole. Storage in Lake Texoma is used *every day* for hydro generation. Any reduction in the water in storage for hydropower purposes will impact generation. Even if quantities of water released through the turbines were not reduced, consumptive diversions would reduce the generating head, thereby affecting the plant’s efficiency. When the Tulsa District issued a partial draft reallocation study in mid-2004, it concurred with SWPA that there would be a significant energy loss, on the order of 22.6 GWh per year, if the entire 300,000 a.f. were reallocated and used for consumptive purposes. It is also clear that the power plant’s capacity would be adversely affected, but the magnitude of that impact has not been determined.

The Water Resource Development Act of 1986 included a requirement that affected preference customers are to be reimbursed for an amount equal to the customer’s actual replacement cost for hydropower lost as a result of a reallocation, less the cost such customer would have had to pay to SWPA (§ 838(d)(3)). It is important for the DEA to acknowledge that there will be such an impact, and that the hydropower losses will affect the cost and feasibility of the municipal water supply.

In describing the Proposed Action, the DEA states that “300,000 acre-feet of water currently in hydropower storage would be reallocated to water supply storage, creating a total of 450,000 acre-feet of water supply” (p. 4). The DEA goes on to say:

Water supply at Lake Texoma was not an original project purpose. Several special congressional authorizations have made storage available to users throughout the years. When the Federal government realized that there was an increasing demand for water supply storage, studies were conducted (in 1983 and 1985) to reallocate a total of 150,000 acre-feet of storage from the hydropower purpose to water supply. [p.5.]

Tex-La requests that the Corps clarify the authority to reallocate a total of 450,000 a.f. to water supply storage. While we recognize that the North Texas Municipal Water District

was permitted to contract for an initial 75,000 a.f. of water for municipal uses in 1985, we are not aware of the legal authority under which that contract was executed. The Corps' regulations require a congressional authorization before a volume in excess of 50,000 a.f. can be reallocated from one project function to another (ER 1105-2-100, at pp. 3-33 & E-215). As the DEA correctly notes, water supply was not an original project purpose, but we are unaware of which "congressional authorizations have made storage available to users throughout the years" at Lake Texoma, apart from WRDA in 1986, which authorized a total of 300,000 a.f.—not 450,000.

Section 5.2 – Hydrology – Tex-La supports SWPA's detailed comments on this section (and its constituent subsections). We especially wish to emphasize the DEA's failure to address the proposed reallocation's impact on downstream habitat of the endangered Interior Least Tern. In recent years the Tulsa District, SWPA, and its power contractors have voluntarily increased the duration and frequency of water releases at Denison Dam to maintain and enhance Least Tern habitat. The continuation of these releases is not dependable following a reallocation, because the water supply allocation does not include storage for endangered species habitat enhancement. The Tulsa District should contact the U.S. Fish and Wildlife Service to determine whether a biological assessment of the proposed action's impact on the Least Tern is required.

Section 5.4.2 – Air Quality – The DEA concludes the reallocation will have no material impact on air quality. Although air quality impacts may be relatively minor, the EA should acknowledge that the need for Tex-La and Rayburn Country to replace lost hydroelectric generation with fossil fuel-generated energy will have some impact on air quality.

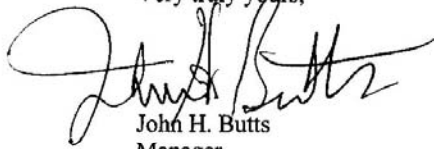
Water Quality – Information on an extensive list of environmental parameters is presented in the DEA, but remarkably, the DEA contains **no information on the water quality of Lake Texoma – particularly salinity**. The salinity of Lake Texoma makes it unmarketable for human consumption, a primary municipal use, without desalination. Desalination produces brine, the existence and disposal of which must be addressed. To do more than just a cursory analysis, the timing and location of requests is important. Using municipal water adjacent to the shores of Lake Texoma will require a different disposal of brine compared to an inter-basin transfer where water may be blended with larger quantities of "fresher" water to reduce or eliminate the need for brine disposal. Although recent technology advances have reduced the costs of desalination and brine disposal, the need for such measures in connection with municipal water supplies must be acknowledged and addressed. The impact of desalination costs on the demand for municipal water and the feasibility of the proposed reallocation should also be explored.

Appendix B – Yield Analysis Using SUPER – Tex-La agrees with SWPA that the displacement of storage capacity in Lake Texoma due to sediment inflow should be shared among all storage functions, and not assigned entirely to hydropower. Similarly, water dedicated to environmental mitigation following any reallocation should be shared among storage functions *pro rata*.

Stephen L. Nolen
April 6, 2005
Page 5

In closing, Tex-La reiterates its support for SWPA's comments, and appreciates the Tulsa District's consideration of the supplemental points raised above.

Very truly yours,



John H. Butts
Manager

cc: Bethel Herrold (SWPA)
Marshall S. Boyken (SWPA)
Ted Coombes (SPRA)
John Kirkland (Rayburn Country)
David Fitzgerald, Esq. (Rayburn Country)



Department of Energy
Southwestern Power Administration
One West Third Street
Tulsa, Oklahoma 74103-3519

April 4, 2005

Colonel Miroslav P. Kurka
District Engineer
U. S. Army Corps of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Dear Colonel Kurka:

This letter is in response to a U. S. Army Corps of Engineers' Tulsa District letter dated January 19, 2005, concerning the draft Environmental Assessment (EA) Lake Texoma Storage Reallocation Study, Lake Texoma, Oklahoma and Texas. The draft EA is intended to address the impacts of the proposed 300,000 acre-feet (ac-ft) water storage reallocation at Lake Texoma. Southwestern Power Administration's (Southwestern) specific comments regarding the draft EA are included as an enclosure.

Southwestern is very concerned about certain deficiencies of the draft EA. First, the Tulsa District has not identified other alternatives that are reasonable in supplying the requested water storage for municipal water supply. The National Environmental Policy Act (NEPA) requires that all reasonable alternatives to a Federal action be evaluated. Also, the Tulsa District has not identified the impacts that the proposed water storage reallocation will have on the existing authorized purposes at Lake Texoma. The Tulsa District should complete a reallocation study which would adequately evaluate the impacts of the requested action and all reasonable alternatives to that action. Until that study has been completed, Southwestern believes that an adequate draft EA cannot be developed for review.

As you know, Southwestern is the Federal agency that markets the Federal hydropower produced at Lake Texoma. The proposed reallocation of 300,000 acre-feet of hydropower storage will have a severe impact on the marketable capacity and energy that has been contracted from the project. We believe a compensation procedure must be developed to offset those negative impacts.

Southwestern recommends that work on the draft EA be suspended until the reallocation study has been completed in adequate detail to identify the impacts on the existing purposes. Southwestern is willing to partner with the Tulsa District in all areas of the reallocation process, especially in the evaluation of the impacts on the Federal hydropower purpose.

Southwestern appreciates the opportunity to provide comments on the draft EA. Please contact Marshall Boyken, (918) 595-6646 or marshall.boyken@swpa.gov, if you have any questions about our comments or if you desire for Southwestern to actively participate in the reallocation study.

Sincerely,

Forrest E. Reeves
Assistant Administrator
Office of Corporate Operations

Enclosure

cc:
Ted Coombes
Southwestern Power Resources Assoc.

Keith Hartner
Associated Electric Cooperative

John Butts
Tex-La Electric Cooperative

John Kirkland
Rayburn Country Electric Cooperative

April 4, 2005

**Southwestern Power Administration Comments for the Draft Environmental
Assessment – Lake Texoma Storage Reallocation Study, Lake Texoma, Oklahoma
and Texas**

1. We believe the draft EA is incomplete because it does not contain or reference a reallocation study for Lake Texoma. In our view, at the very least, a reallocation study for Lake Texoma must contain:
 - An in-depth hydropower benefit analysis
 - An in-depth flood control frequency benefit analysis
 - A water supply demand analysis
 - A water supply storage/yield analysis
 - A detailed summary of the alternatives considered (flood control storage, conservation storage, ground water, other surface water projects, etc.)
 - The National Economic Development Plan analysis
 - A cost of storage analysis
 - A determination of benefits foregone (hydropower and flood control)
 - A determination of revenues foregone (revenues lost by the Federal Treasury due to the reallocation of the storage)
 - An updated cost of storage
 - Updated annual repayment costs
 - The financial feasibility of the reallocation
 - Compensation to existing project purposes

Southwestern believes that the EA cannot be appropriately drafted without knowing the reallocation study results listed above.

2. Section 1 – Purpose, Need and Scope, Page 1. The second paragraph needs to list the water utilities requesting storage from Lake Texoma and the amount of water supply storage needed in the next 10 year period to meet the water utilities' estimated growth.
3. Section 2.2 – Action Alternatives, Page 4. All reasonable future water supply alternatives need to be addressed in this section. Reasonable alternatives for the future water supply of the area would include: water supply from neighboring utilities, ground water, surface water supplies and flood control and hydropower storage reallocation at Lake Texoma.
4. Section 3 – Proposed Action, Page 4. The sentence, "*The hydropower storage proposed for reallocation has not been used for hydropower generation in the past.*" is incorrect. The hydropower storage at Lake Texoma is used every day. Southwestern markets energy (actual power produced) and capacity (potential power) for the Federal government from Lake Texoma. The less hydropower

Enclosure

storage available for generation, the less capacity a project has, and therefore, the benefits it provides to the electric consumers are diminished. Long-term power sales contracts have been entered into by the Federal Government and would have to be amended as a result of the proposed reallocation. If a large reduction in hydropower storage at Lake Texoma occurs, the marketable capacity and energy of the project will be significantly reduced.

5. Section 4.4.3 – Hydrology, Page 12. Second Paragraph. Second sentence needs to add water supply as a purpose.
6. Section 4.4.3 – Hydrology, Page 13, Table 7. Note 2 is incorrectly placed. The conservation storage includes 150,000 ac-ft of water supply storage.
7. Section 4.4.3 – Hydrology, Page 14, Paragraph 1. The last sentence is misleading. It should state that the 228.4 cfs is the yield available from the existing 150,000 ac-ft of water supply storage in the year 2044, rather than stating that the 228.4 cfs is the future water supply available. Please clarify.
8. 5.1.2.1 Population, Page 20. This paragraph contradicts itself. The first sentence states that the reallocation will have a direct effect on the population. The second sentence states that the reallocation would not affect the population growth trends in the area, while the last sentence says it would cause local changes in population. Will this reallocation effect the area population or not? Please clarify.
9. Section 5.2 – Natural Resource Impacts, Table 10, Pages 21 and 22. Table 10, the Impact Assessment Matrix needs to be corrected and completed as follows:
 - The reallocation will have a minor adverse impact on the Public Health and Safety, Community Growth and Development, Public Facilities and Services, and Air Quality. Please correct.
 - The reallocation will have a substantial adverse impact on Threatened and Endangered Species (see comment 12). Please correct.
 - The reallocation will have a significant adverse impact on Hydropower. Please add hydropower to the Impact Assessment Matrix to complete Table 10.
10. Section 5.2.2.3 – Hydrology, Paragraph 2, Page 23.
 - Change, “These changes could reduce the amount of water available in hydropower storage.” to “The changes will reduce the amount of hydropower storage and ultimately the water available for generation.”
 - The current Hydropower Storage is 1,317,283 ac-ft which will be reduced to 1,017,283 ac-ft ($1,467,283 - 150,000 - 300,000 = 1,017,283$). The 150,000 ac-ft of current water supply storage must be accounted for.

- It is stated that "The discharges that will have the most pronounced changes are from 600 to 7000 cfs." These discharges represent the hydropower releases. More elaboration on the profound effect the reallocation will have on the hydropower purpose is needed in the paragraph.
11. Section 5.2.2.3 – Hydrology, Paragraph 2, Page 24. Change "Although lake levels might be reduced slightly, this could result in the creation....." to "Although lake levels will be reduced slightly, that could result in the creation..." Also, the EA should state that if the proposed reallocation of 300,000 ac-ft of water storage occurs and the hydropower operation remains constant, the lake level will be reduced significantly.
 12. Section 5.2.2.3 – Hydrology, Paragraph 3, Page 24. The reduction in downstream discharge and frequency will affect wetland habitat (specifically Interior Least Tern habitat). The paragraph seems to imply that there is water storage for downstream low flow releases. The draft EA should state that there is no water storage in Lake Texoma allocated for the regulation of a minimum flow downstream from the project and that the low flow releases are voluntary and cannot be considered dependable. If the 300,000 ac-ft is reallocated from hydropower storage to water supply, the water supply purpose should proportionally share with any voluntary/mandatory releases for downstream habitat protection; otherwise, there would be a significant impact on the downstream Interior Least Tern habitat.
 13. Section 5.2.2.5 – Threatened and Endangered Species, Paragraph 1, Page 25. We believe the reallocation will reduce hydropower discharges which will affect the habitat of the Endangered Interior Least Tern. What reasoning has the Draft EA used to conclude that reductions in discharge and frequency from Lake Texoma will not affect the Least Tern? Over the past several years, hydropower releases at Lake Texoma have been voluntarily increased (duration and frequency) to enhance and maintain Interior Least Tern habitat. These flows are not dependable since there is no water storage allocation in Lake Texoma for downstream habitat maintenance with the proposed reallocation of water storage.
 14. Section 5.4.2. – Air Quality, Proposed Action, Page 26. The draft EA should quantify the additional air pollution that will be produced as a result of the loss of hydropower production (i.e. How many tons of mercury, carbon dioxide, sulfur dioxide, and nitrogen oxide will be emitted into the atmosphere due to the water supply reallocation?). The draft EA should recognize that the loss of hydropower energy will not be replaced with other hydropower energy, but, in all likelihood, with some form of fossil fuel-produced electric energy.

15. Section 6. – Mitigation Plan, Paragraph 3, Page 27. It should be made clear in the paragraph that the water supply purpose has a proportional share of any water releases made for mitigation purposes.
16. Section 7. – Federal, State, and Local Agency Coordination, Page 28. Please place Southwestern Power Administration, Southwestern Power Resources Association, Tex-La Electric Cooperative of Texas, Inc., and Rayburn Country Electric Cooperative, Inc. on the coordination list.
17. Appendix B – Overview of the SUPER Model, Page B-1, Paragraph 1, Sentence 2. Remove the comma after analysis.
18. Appendix B – Texoma Yield Analysis Using SUPER. The yield analysis of the reallocated storage is incorrect. In the year 2044, it is projected that Lake Texoma will have an available water storage amount of 986,730 ac-ft. It appears that the draft EA is maintaining the water supply storage volume and reducing the hydropower storage volume by placing all of the sediment inflow in the hydropower storage of Lake Texoma. If the additional 300,000 ac-ft of water supply storage is reallocated from hydropower storage, the total amount of water supply storage would be 450,000 ac-ft, or about 31 percent of the entire conservation storage and the hydropower storage would account for the remaining 1,017,283 ac-ft of storage, or about 69 percent of the conservation storage. The sediment inflow should be shared on a proportional basis; therefore, the future water supply storage (in year 2044) cannot be 450,000 ac-ft. The future water supply storage should be a smaller volume that has been reduced as a result of sediment inflow. The reduced water supply storage volume would then have a different yield associated with it.



Southwestern Power Resources Association

P. O. Box 471827
3840 S. 103 E. Ave., Ste. 117
Tulsa, Oklahoma 74147
918-622-7800
FAX 918-622-8141

April 7, 2005

Colonel Miroslav P. Kurka
Commander, Tulsa District
U.S. Army Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK 74128-4609

Dear Colonel Kurka:

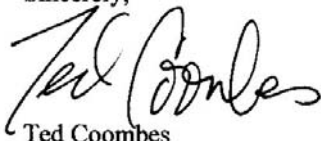
Via this correspondence, Southwestern Power Resources Association (SPRA) offers its comments on the draft Environmental Assessment (EA), Lake Texoma Storage Reallocation Study. SPRA represents the rural electric cooperatives, municipally owned electric utilities, and state power agencies and authorities that purchase hydropower generated at 24 Corps of Engineers projects in this area of the country. This energy is marketed to us by Southwestern Power Administration (SWPA), an agency of the Department of Energy. One of the projects serving SPRA members is Denison Dam (Lake Texoma). The proposed reallocation of 300,000 acre-feet of hydropower storage at Lake Texoma would reduce electrical energy and capacity available from the project, directly impact SPRA's membership.

SPRA concurs with the conclusion of SWPA and Tex-La Electric Cooperative of Texas, Inc. that the draft EA fails to conform to the requirements of the National Environmental Policies Act (NEPA) and should be withdrawn and redrafted. ER 200-2-2, which provides guidance for NEPA compliance, states that "the EA should include a brief discussion of the need for the proposed action, or appropriate alternatives if there are unresolved conflicts concerning alternative uses of available resources..." The instant draft EA neither establishes a need for the proposed reallocation nor identifies appropriate alternatives. While the draft EA asserts that the reallocation "is needed to meet the expanding municipal and industrial water supply demands that are a result of population growth in the region," nowhere in the draft is that demand documented or quantified. In fact, the draft does not even establish that the existing 150,000 acre-feet of water supply storage at the project is fully contracted or utilized. To comply with both NEPA and ER 200-2-2, the EA should identify how much of the existing M&I storage is contracted for and utilized and should quantify how much additional water supply will be needed in the future, as well as by whom and when it will be needed. Likewise, the EA should identify all reasonable alternatives to the proposed reallocation, including (but not limited to) use of ground water, other surface impoundments, diversion from the Red River below Denison Dam, and reallocation from the flood control pool, in addition to the no-action and reallocation from the power pool alternatives identified in the draft EA. Finally, the draft EA should measure the environmental effects of each of these alternatives and recommend the one that satisfies the established need for additional water supply with the least environmental consequences.

Colonel Miroslav P. Kurka
April 7, 2005
Page Two

There are other errors and shortcomings in the draft EA, as well. In addition to these general comments, SPRA has enclosed specific comments addressing individual sections of the draft EA. We respectfully request that both of these documents be accepted as public comments submitted in response to the draft EA. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Coombes". The signature is stylized with a large, sweeping "T" and "C".

Ted Coombes
Executive Director

**Specific Comments of SPRA
Draft Environmental Assessment
Lake Texoma Storage Reallocation Study**

Section 1, p. 1: The statement that the proposed reallocation “is needed to meet the expanding municipal and industrial water supply demands that are a result of population growth in the region” is an unsubstantiated assertion. The draft EA should identify how much of the existing 150,000 acre-feet of water supply storage is currently contracted for and by whom, and should quantify the need for additional water supply storage and the time-frame during which this additional storage will be needed. (See general comments.)

Section 2.1, No Action Alternative, p. 4: The statement that “Essentially all of the current water supply is being used and North Texas is in need of additional water” is not substantiated. See comment on Section 1 and general comments.

Section 3, Proposed Action, p. 4: The statement that “The hydropower storage proposed for reallocation has not been used for hydropower generation in the past” is patently false. The paragraph should be corrected to show that all of the hydroelectric capacity at Denison Dam is under contract and that the proposed reallocation would reduce both the capacity and energy available from the hydropower plant.

Section 4.3.4, Social Ecology, p. 7: The description of Durant, Oklahoma and Denison, Texas as “growing communities” gives the false impression that there has been substantial population growth requiring additional water supply. In fact, Tables 1 and 2 on p. 6 indicate that population growth of Durant is less than 58 percent of the State of Oklahoma’s average growth over the past decade, while the population growth of Denison is only 26 percent of the average growth over that same period for the State of Texas. The adjective “growing” should be dropped from the sentence.

Table 7, Water Storage Data for Lake Texoma and Denison Dam, p. 13: According to footnote 2, the flood control storage includes 150,000 acre-feet of water supply storage. This is incorrect, and the table should be corrected.

Table 8, Comparison of Water Storage Capacity at Lake Texoma (1942-2002), p. 14: This table is very confusing. One would assume from the table that between 1942 and 1969, water storage capacity decreased 8.5 percent. However, the actual decline in storage was 14.2 percent (the water storage capacity by 1969 had dropped 443,882 acre-feet from the design volume, which is 14.2 percent of the design capacity of 3,132,293 acre-feet). Perhaps that is not how the table was computed, because none of the percentages track. At any rate, the table should be redesigned so that the reader can clearly understand what the table purports to show.

Section 4.4.3, Hydrology, p. 14: The second paragraph discussing Appendix B describes discharge duration in two different ways (percent of time a particular discharge was equaled or exceeded vs. percent of years a particular discharge was equaled or exceeded). Presumably the second reference to discharge duration should have referred to discharge frequency. The paragraph should be corrected.

Section 4.5, Cultural Resources, p. 18: The second paragraph notes that the Oklahoma Historical Society concluded that the proposed reallocation would involve “no construction or earth-moving activities.” This pointedly ignores the next sentence in the letter from the Oklahoma Historical Society, found at D-2: “Should further projects include construction or earth-moving activities, an opinion should be requested from this office.” While it is true that the act of reallocation itself does not involve construction or earth-moving activities, it would be necessary for water supply contractors to construct intake structures to utilize the reallocated storage, as well as constructing additional water treatment facilities or expanding existing treatment facilities. All of these activities involve earth moving. Thus, it is incorrect to conclude, on the basis of the letter from the Oklahoma Historical Society, that there would be no impact on cultural resources. The draft EA should be rewritten to identify and quantify any potential impacts from construction of water intake structures, construction of additional water treatment facilities, or expansion of existing water treatment facilities that would be required to utilize the reallocated storage – if, indeed, there is a demonstrated need for the proposed reallocation.

Section 5.1.1.2, Employment and Income, p. 20: This section states that, under the no-action alternative, “Municipal, industrial, and agricultural opportunities would continue to be limited to the 150,000 acre-feet of water currently available in water supply storage at Lake Texoma.” This is incorrect. Additional water supply is available from alternative sources, such as existing, expanded, or new impoundments other than Lake Texoma; ground water withdrawals; and diversions from the Red River below Denison Dam.

Section 5.1.2.1, Population, p. 20: This section concludes that the proposed reallocation “could promote growth of business-related opportunities and residential development in the social area, which could cause small, local changes in population.” This statement assumes that there is a need for additional water supply that only the proposed reallocation can satisfy. The draft EA neither demonstrates nor quantifies a need for additional water supply, nor does it examine other alternative sources of water supply.

Section 5.1.2.3, Social Ecology, p. 20: This section asserts that the proposed reallocation would lead to “Increased demand for new residential developments [that] would increase the transition of agricultural lands into residential areas.” Again, this statement assumes that there is a need for additional water supply that only the proposed reallocation can satisfy. The draft EA neither demonstrates nor quantifies a need for additional water supply, nor does it examine other alternative sources of water supply.

Section 5.2.2.1, Terrestrial, p. 23: This section states, “Construction and earth-moving activities would not be associated with the storage reallocation project at Lake Texoma.” Again, this ignores the construction and earth moving that would be required to build water intake structures and treatment facilities to utilize the proposed reallocated storage. The draft EA can not conclude, therefore, that there are no impacts of the proposed action on terrestrial resources until it identifies and quantifies the impact from these associated construction and earth-moving activities.

Section 5.2.2.2, Soils and Prime Farmland, p. 23: This section asserts that the proposed storage reallocation would not result in any prime farmland being taken out of agricultural production. This directly contradicts the conclusion on p. 20 that the additional water supply will lead to additional residential construction that “would increase the transition of agricultural lands into residential areas.” If the latter statement is correct (which the draft EA fails to demonstrate), the former statement is incorrect.

Section 5.2.2.4, Fish and Wildlife, p. 24: This section states, “Construction and earth-moving activities are not necessary to implement the storage reallocation project at Lake Texoma...” Again, this ignores the construction and earth moving that would be required to build water intake structures and treatment facilities to utilize the proposed reallocated storage. The draft EA can not conclude, therefore, that there are no impacts of the proposed action on fish and wildlife resources until it identifies and quantifies the impacts from these associated construction and earth-moving activities.

Section 5.2.2.5, Endangered Species, p. 25: This section asserts that “modified releases from the dam are made to enhance or maintain interior least tern habitat, and would continue under the Proposed Action as necessary.” This statement might be correct if water supply contractors are required to proportionately share in the amount of water released for this purpose. However, if such releases are limited to the hydropower storage, the draft EA does not demonstrate that the reduced dependable yield of the power pool will be sufficient to serve these purposes, particularly during periods of drought. SPRA believes that all assigned storage should be required to proportionately share in any releases from the dam necessary to meet endangered species requirements. This section should be redrafted to indicate that proportional releases will be made from the water supply storage to meet these objectives.

This section also states that “there would be no construction-related activities that could impact bald eagles (e.g. noise from heavy equipment or tree removal) associated with the proposed reallocation.” A similar statement is made with regard to whooping cranes and piping plovers. Again, this ignores the construction and earth moving that would be required to build water intake structures and treatment facilities to utilize the proposed reallocated storage. The draft EA can not conclude, therefore, that there are no impacts of the proposed action on threatened and endangered species until it identifies and quantifies the impacts from these associated construction and earth-moving activities.

Section 5.4.2, Proposed Action, p. 26: This section concludes that “The Proposed Action would not result in any effects on air quality.” This statement is incorrect. The proposed reallocation will reduce both energy and electrical capacity available from the Denison Dam hydropower plant. In today’s market, this lost energy and capacity likely would be replaced from thermal generation resources. Hydropower generation does not emit any atmospheric gasses; thermal generation does. The draft EA should be revised to quantify the amount of electrical energy and capacity lost at Denison Dam due to the proposed reallocation and quantify the increase in specific atmospheric gasses that replacement by thermal generation would cause. The draft EA also must identify and quantify the cumulative impacts of reduced hydropower generation at Denison Dam. This would include the impacts of previous reallocations at the project, and it also should quantify the increase in atmospheric gasses that the previous and

proposed reallocations will result in over the remaining life of the project. Only when these impacts have been identified and quantified can the EA realistically assess impacts on air quality.

Section 5.6.2, Proposed Action, p. 27: The draft EA asserts that “The proposed storage reallocation at Lake Texoma would not result in any affects on noise in the project area.” Again, this ignores the construction and earth moving that would be required to build water intake structures and treatment facilities to utilize the proposed reallocated storage. The draft EA can not conclude, therefore, that there are no impacts of the proposed action on noise until it identifies and quantifies the impacts from the associated construction and earth-moving activities.

Section 6, Mitigation Plan, p. 27: This section identifies various mitigation activities that might be employed to address various environmental contingencies, including releases from Denison Dam to protect interior least tern nesting sites. Again, this section should be revised to indicate that proportional releases will be made from the water supply storage to meet this objective.

Appendix A, Coordination/Correspondence, p. A-16: The Texas Water Development Board indicates in a letter dated May 3, 2004 that it prefers reallocation from the flood pool of reservoirs as “the most cost-effective and least environmentally disruptive way of meeting water demand in Texas.” However, the draft EA did not study this alternative. The State of Texas’ support for reallocation from the flood pool should be recognized at the appropriate point in the body of the EA.

Appendix C, U.S. Fish and Wildlife Service Correspondence, p. C-1: A letter dated October 5, 2004 from the U.S. Fish and Wildlife Service (USFWS) contains the following statement: “If municipal water use is expected to increase, we recommend that the Corps address these potential impacts before approving any reallocations that may affect reservoir levels.” The draft EA presumes there will be an increase in municipal water use; otherwise, there would be no justification for the proposed reallocation. While the proposed reallocation would not change the top of the conservation pool, the draft EA recognizes in several instances that reallocation would affect reservoir levels. Yet the draft EA does not even acknowledge, much less address, the issue raised by USFWS. The EA should acknowledge this stated concern and address it in the appropriate section.

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April 4, 2005

Mr. Steve Nolan
Chief, Environmental Analysis
and Compliance Branch
U.S. Army Corps of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Dear Mr. Nolan;

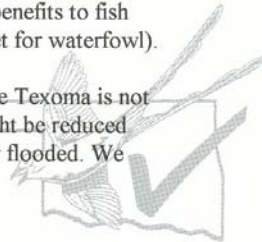
Following review of the 19 January 2005 Draft Environmental Assessment (Draft EA) regarding the reallocation of approximately 300,000 acre-feet of water from hydropower storage to water supply storage at Lake Texoma, the Oklahoma Department of Wildlife Conservation (ODWC) provides the following comments.

Hydrology

Data seem to indicate the proposed action will have minimal impact on downstream releases and elevations within the lake during years of normal or average rainfall. However, the predicted changes of 3-8 percent could be much greater during periods of low rainfall or during drought years. Additional data or modeling during record drought years (a worse case scenario) is needed to evaluate actual impacts to lake elevations and downstream resources during these critical months. It is not possible to determine potential effects on the lake and dependent fish and wildlife resources without quantifying the seasonality of all water uses during drought years. Mean conditions over the period of record mask the serious impacts that would be expected during maximum water use under drought periods. Given the expected peak seasonal water withdrawals for both hydropower and water supply use (especially in summer months), the lake would most likely be drawn down earlier, faster and for a longer duration in the summer and fall months with less probability of recovery to target seasonal pool elevations in the fall and winter months.

The cumulative effects of drought years and the increased water demands in the upper Red River, within the reservoir and downstream will adversely affect the existing water level manipulation plan designed and sanctioned by the Lake Texoma Advisory Committee and its benefits to fish and wildlife (i.e., spawning and nursery habitat and planting and flooding of millet for waterfowl).

The Draft EA suggests the reduction in elevation, duration and frequency at Lake Texoma is not expected to adversely affect aquatic or wetland habitat. Although lake levels might be reduced slightly, this could result in the creation of wetlands in areas that were previously flooded. We



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would expect lower average pool elevations that would negatively affect associated riverine and palustrine wetland habitats due to changes in timing and duration of wetland hydrology including but not limited to fall and winter recharge events. It is not clear how it is possible to “create” wetlands by “slightly reducing” the lake level. Certainly a change in the characteristics of the lake as a lacustrine wetland type, including average depths and the overall hydrological regimen would occur. ODWC believes additional clarification is needed.

Fish and Wildlife

The Draft EA indicates reductions in elevation duration, elevation frequency, discharge duration, and discharge frequency could have impacts on wildlife that use the aquatic and wetland habitat available in the lake and the Red River. In the next paragraph it states “Under the Proposed Action, reductions in discharge duration and frequency from the lake are not expected to significantly affect wildlife or their habitat downstream of Lake Texoma.” We do not agree that these effects will be insignificant. This document does not provide enough information to make a complete assessment of the impacts to fish, wildlife and invertebrates.

ODWC believes that reduced flows to the tailwater will have a dramatic adverse affect on the fishery from the dam downstream to the confluence of Blue River before supplemental water enters the Red River. This area supports a very popular recreational fishery. We suggest that the Corps monitor the water quality below the dam and continue providing sufficient water releases to prevent fish stress and mortality. Water quality standards for dissolved oxygen and other parameters should be met.

Water quality and fisheries resources in the main pool of Lake Texoma could be adversely impacted as hypolimnetic hydropower releases are replaced by epilimnetic withdrawals for municipal water supply.

Available data suggest that higher lake levels (as promoted in the current water level manipulation plan) in late fall and winter months reduce the risk of mussel and fish mortality due to golden alga. Advocating low water levels that could optimize conditions that can potentially promote a major fish kill event that decimates a \$30 million annual fishery resource would have significant economic impacts locally and statewide.

There is no specific section detailing wetland types, numbers and locations that are associated with Lake Texoma which might be impacted by the proposed action. Additional discussion and documentation of wetland impacts in this document is warranted.

The Draft EA should include smallmouth bass (*Micropterus dolomieu*) as an important sport fish because of its increasing abundance and popularity with anglers. Lake Texoma has held the past five Oklahoma smallmouth bass State Records since 1988.

The Draft EA indicates “The spawning of striped bass in the Red and Washita Rivers is key to continued success of this sport fishery.” In reality the continued success of the Lake Texoma fishery is dependent on numerous physical, chemical, biological and social factors.

Threatened and Endangered Species

It is stated in this section that "Reductions in elevation, duration and frequency at Lake Texoma would not significantly affect the shoreline habitat that may be used by whooping cranes. In fact, a reduction in elevation, duration and frequency at the lake could result in the formation of new wetlands, which could provide additional nest areas for whooping cranes." Whooping crane nesting has not been documented in Oklahoma.

Cumulative Impacts

The Draft EA suggests the proposed action will have no cumulative impacts, but provides no documentation for this assertion. ODWC believes reallocation of 300,000 acre-feet to water supply storage will have adverse impacts to fish and wildlife resources and recreational opportunities at Lake Texoma.

Mitigation Plan

The Corps should continue low flow water releases into the tailwaters during the critical summer months to maintain adequate water quality to prevent the stressing or loss of fish and other aquatic organisms. The Drought Contingency Plan should be updated to accommodate project purposes as related to changes in operational regimens due to this proposed action. The current Water Level Manipulation Plan should not be compromised by this proposed action.

We suspect that appreciable decreases in the fish and wildlife resources of the lake and the Red River below will occur and that an environmental impact analysis should be conducted to adequately assess the magnitude of this proposed action.

Sincerely,



Greg D. Duffy
Director



April 7, 2005

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EXECUTIVE DIRECTOR

Tulsa District, Corps of Engineers
Attention: Environmental Analysis and Compliance Branch
1645 S. 101st E. Avenue
Tulsa, Oklahoma

Re: Reallocation of 300,000 Acre-Feet of Water from Lake Texoma

Staff has reviewed the notice of intent to reallocate 300, 000 acre-feet of water from hydropower storage to water supply storage at Lake Texoma to increase water supply storage for municipal use.

The effects on State of Texas fish and wildlife resources would presumably be primarily within Lake Texoma. The downstream aquatic and near-stream habitats actually lie within the State of Oklahoma as the state boundary is the south bank of the Red River. Department staff defer to staff of the Oklahoma Department of Wildlife Conservation for assessment of impacts to fish and wildlife resources in Oklahoma. Since the actual amount of water removed from Lake Texoma remains the same, there should not be major alternative impacts to the lake fishery, unless the timing of removals is significantly altered. The conditions placed previously by the Corps on the intake of water from Lake Texoma for the same water supply entities should remain in place: Measures should be taken as stipulated to prevent significant effects on striped bass and other pelagic species in the reservoir. Further, the management measures placed on discharging the redirected water through streams like Sister Grove Creek should be followed to prevent any significant adverse impacts on the fish fauna and the integrity of the streambed and banks by inappropriate flow regimes.

A new factor of concern has arisen since that previous permit was issued: Golden Alga has been detected in streams and reservoirs in the western parts of Oklahoma and Texas, and has in a number of cases resulted in major fish kills and detrimental effects on the fishery, recreation and tourism in the affected areas. The potential for exacerbation of this toxic alga on receiving waters should be thoroughly analyzed and resolved prior to changing the delivery rates and times of potentially hazardous water to previously unaffected water bodies.



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Tulsa District, Corps of Engineers
Page 2
April 7, 2005

Questions can be directed to Rollin MacRae in Austin (512-389-4639)
rollin.macrae@tpwd.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Rollin MacRae".

J. Rollin MacRae
Wetlands Conservation Team Leader

JRM:sh

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 18, 2005

Stephen L. Nolen
Chief, Environmental Analysis and Compliance Branch
Department of Army
Corp of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Re: TCEQ GEARS # 6431, Lake Texoma Water Reallocation

Dear Mr. Nolen:

The Texas Commission on Environmental Quality (TCEQ) has reviewed the above-referenced project and offers the following comments:

A review of the project for General Conformity impact in accordance with 40 CFR Part 93 and Chapter 101.30 of the TCEQ General Rules indicates that the proposed action is located in Grayson and Cooke Counties, which are currently unclassified or in attainment of the National Ambient Air Quality Standards for all six criteria air pollutants. Therefore, general conformity does not apply. Further, the project as proposed contains no demolition, construction, rehabilitation or repair component which will produce dust and particulate emissions and we, therefore, have no objections or comments at this time.

Significant long-term environmental impacts from this project are not anticipated as long as construction and waste disposal activities are completed in accordance with applicable local, state, and federal statutes and regulations. We recommend that the applicants take necessary steps to insure that best management practices are utilized to control runoff from construction sites to prevent detrimental impact to both surface and groundwater.

Thank you for the opportunity to review this project. If you have any questions, please call Mr. Forrest Brooks at (512) 239-4900.

Sincerely,

A handwritten signature in cursive script that reads "Thomas W. Weber".

Thomas W. Weber
Manager, Water Section
Chief Engineer's Office

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: www.tceq.state.tx.us

printed on recycled paper using soy-based ink

BRICKFIELD BURCHETTE
RITTS & STONE, PC

WASHINGTON, D.C.
AUSTIN, TEXAS

February 17, 2005

Via Facsimile (918-669-7546) and Federal Express (Overnight)

Mr. Stephen L. Nolen
Chief, Environmental Analysis and Compliance Branch
U.S. Army Corps of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, OK 74128-4609

Re: *January 2005 Draft Environmental Assessment, Storage Reallocation
Study, Lake Texoma, Oklahoma and Texas*

Dear Mr. Nolen:

Brickfield, Burchette, Ritts & Stone, P.C. represents Tex-La Electric Cooperative of Texas, Inc ("Tex-La"). Under a March 13, 2000 Power Sales Contract with the Southwestern Power Administration ("SWPA"), Tex-La and Rayburn Country Electric Cooperative, Inc. ("Rayburn Country") collectively purchase all of the hydroelectric power generated at Denison Dam, which impounds Lake Texoma. (Tex-La's share of the hydro output is 39.25%; Rayburn Country's share is 60.75%.) Tex-La very recently became aware that the Corps of Engineers' Tulsa District office had issued a Draft Environmental Assessment ("DEA") for the proposed reallocation of 300,000 acre-feet of water in Lake Texoma from "hydroelectric storage" to "water supply." Because the proposed reallocation would significantly and adversely affect the quantity of hydroelectric capacity and energy available for sale to Tex-La, and because Tex-La did not receive the DEA until early February, we hereby request a 45-day extension of the February 21, 2005 deadline for submitting comments on the DEA.

Tex-La has serious concerns with the scope of the proposed reallocation and with the DEA. To the extent that hydroelectric production is diminished as a result of reallocating Lake Texoma water to municipal, industrial and agricultural water supply, the Cooperatives must replace the lost generation with relatively expensive alternative power supplies. The DEA contains no analysis whatsoever of the impacts of the reallocation on hydropower generation. Instead, the DEA merely states that "[t]he hydropower storage proposed for reallocation has not been used for hydropower generation in the past." This statement is clearly in error, and casts doubt on the analyses contained elsewhere in the DEA.

The Water Resources Development Act of 1986 (Public Law 99-662), which the Corps cites as authority for the reallocation, provides (in section 838(d)(3)) that any water supply contractor who benefits from a reallocation of Lake Texoma water must compensate SWPA for the replacement cost of any lost hydropower production, and SWPA in turn must make its power

Letter to Stephen Nolen
Page 2
February 17, 2005

BRICKFIELD BURCHETTE
RITTS & STONE, PC

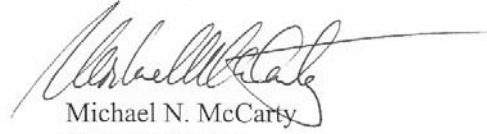
customers whole. The DEA does not address how this statutory requirement would be implemented in connection with any water supply contracts that may result from the reallocation.

The Corps did not initially serve Tex-La with a copy of the January 2005 DEA, nor was a notice of availability of the DEA published in the Federal Register. Tex-La became aware of the DEA only after being notified by SWPA, and has had little more than one week to review the DEA's contents. The initial comment deadline does not afford adequate time for Tex-La to coordinate with its engineering consultants, SWPA, Rayburn Country, and other interested parties to formulate fully informed comments. Accordingly, Tex-La respectfully requests that the Corps extend the deadline for public comments on the DEA by 45 days, *i.e.*, through April 7, 2005.

We understand that SWPA already has made a similar request for extension of time to comment, and that additional such requests have been or will be made by Rayburn Country and the Southwest Power Resources Association. We would very much appreciate a confirmation by fax (202-342-0807) or e-mail (Brian.Drumm@bbrslaw.com) that the deadline has been extended, so that we are not forced to submit rushed and incomplete comments on February 21 (a Federal Government holiday).

Thank you for your consideration.

Very truly yours,



Michael N. McCarty
Brian C. Drumm

cc: John H. Butts, Manager, Tex-La
David Fitzgerald, Esq. (Rayburn Country)
Bethel Herrold (SWPA)
Ted Coombes (SPRA)
Tob Gebhard (GDS Associates)



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02-14-04-1-0748

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Division of Ecological Services
222 South Houston, Suite A
Tulsa, Oklahoma 74127
918/581-7458 / (FAX) 918/581-7467



February 23, 2005

Steve Nolan
Environmental Analysis and Compliance Branch
U.S. Army Corps of Engineers
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Dear Mr. Nolan:

This is in response to a January 19, 2005, letter and Draft Environmental Assessment (Draft EA) from your office requesting comments on a proposed reallocation of water storage at Lake Texoma. The Draft EA was developed in compliance with the National Environmental Policy Act (NEPA) and the proposed action would reallocate approximately 300,000 acre-feet of water storage from hydropower to water supply use. In an October 5, 2004, letter, the U.S. Fish and Wildlife Service (Service) previously provided comments during the scoping process. After reviewing the Draft EA, the Service has additional comments and we are amending some of our previous comments.

Previous Comments

Our October 5, 2004, letter stated that "we do not anticipate any federally-listed species to be adversely affected by the proposed reallocation of water storage." However, that was prefaced by an assumption that demands for municipal water use would stay near current levels and Lake Texoma water levels would not be affected. The modeling in the Draft EA demonstrates that Lake Texoma water levels would be affected if the entire 450,000 acre-feet of allocated water supply were utilized. Lake elevation-duration reductions of 3 to 8 percent are predicted for water surface elevations below 617 feet above mean sea level (MSL). The example in the Draft EA states that elevations of 613 feet above MSL would be exceeded approximately 85 percent of the time with existing conditions, but only 80 percent of the time with the proposed action. The Corps' Management Guidelines for Interior Least Terns lists 613 feet above MSL as a critical low pool condition and all low flow releases for least terns *Sterna antillarum* would be discontinued when lake elevations were predicted to fall below 613 feet above MSL. The information in the Draft EA demonstrates that the proposed project could cause Lake Texoma to be below critical low pool elevations more frequently and low flow releases for least terns could be affected.

The proposed reallocation would reduce discharges into the Red River below Denison Dam. The discharge duration for releases between 600 and 7,000 cfs would be reduced by approximately 3 to 8 percent. Reductions in flows and discontinued low flow releases for least terns are adverse effects that can increase landbridging and related disturbances such as predation, trampling by cattle, and human recreational use. After reviewing this new information, the Service does not concur with the Corps' determination that the proposed action would have no effect on least terns.

Hydrology

The Service agrees that the effects of the proposed action on lake elevations and downstream flows are likely to be relatively small in years or periods of time with above average inflows. However, averaging the potential changes over the entire period of record (1938-2000) tends to mask significant changes that may occur in some years. If changes of 3 to 8 percent are measured over the entire period of record, then much greater changes are likely to occur in some individual years or drought periods. The highest municipal demands for water are likely to be during summer months and drought periods.

Potential impacts to fish and wildlife resources and recreational uses also are more likely to occur during periods of low inflows. We need to know the variability of changes, as well as the averages, to properly assess potential impacts of the proposed project. It is important to know the potential changes in stage or flow, in addition to the averages of time above a given elevation. The Service recommends modeling individual years that represent examples of low inflow or drought conditions and comparing lake elevations and downstream flows with and without project. We recommend modeling daily elevations during the summer, fall, and winter months to determine potential impacts to the millet seeding program and aquatic habitat. Relatively small changes in reservoir elevation can impact fish and wildlife management and recreational use on Lake Texoma.

Fish and Wildlife Resources

We agree that the potential effects to lake elevations and flows could impact fish and aquatic or aquatic-dependent wildlife. We do not agree that these effects are insignificant. The Draft EA does not provide enough information to make a determination concerning the degree of impacts to most fish and wildlife resources. For example, the Draft EA claims that new wetlands would be formed by the reduced lake elevations and implies that this would somehow mitigate for the loss of aquatic habitat. However, the value of these new wetlands would be questionable because they could be inundated at any time and may not be shallow long enough to develop vegetation and other wetland characteristics. The quantity of wetlands also needs to be addressed. The proposed action actually could reduce total wetland acreage and certainly would reduce total aquatic habitat. The quantity of shallow water habitat or wetlands at Lake Texoma for any elevation is determined by the topography of the reservoir basin. We see no evidence in the Draft EA that reservoir topography information was used to determine the potential project-related impacts to the quantity of shallow water areas. Other Draft EA claims, such as creation of additional nest areas for whooping cranes *Grus Americana* represent a lack of knowledge of wildlife habitat use in Oklahoma and make us question the validity of other claims or assumptions in the Draft EA.

The seasonal pool plan is not changed by the proposed action and we are assuming the Corps will try to maintain the target elevations in that plan. The proposed action would increase the fluctuation of reservoir elevations below the target elevations and such fluctuations that are not planned or timed for wildlife management generally have a negative effect on fish and wildlife resources.

Downstream flows in the Red River would be reduced by the proposed project. Without the modeling we recommended (see comments on Hydrology), it is difficult to assess the degree of impacts to aquatic species in the Red River below Denison Dam. We agree that impacts diminish downstream distance and impacts below the Arthur City gauge may be insignificant. However, the

proposed project would affect hydropower generation and flows downstream of the dam for a considerable distance. The tailrace supports a very popular recreational fishery that would be affected by reduced flows in the summer months or during any drought period. Due to hydropower operations only generating for portions of the day, and not at all on some days, the downstream flows already are very erratic and very low for extended periods of time. The proposed project would make the existing conditions even worse and would extend periods of low downstream flows when inflows and lake elevations were relatively low. The Corps should be monitoring water quality in the tailrace and provide minimum flows to avoid stressing fish and to meet state water quality standards. The proposed mitigation of providing a 50 cfs low flow release may prevent fish kills, but may not be adequate to meet state water quality standards for dissolved oxygen concentrations.

Threatened and Endangered Species

The Service does not concur with the determination in the Draft EA for least terns (see comments for least terns in the Previous Comments section), but we do agree that all other federally-listed species are not likely to be adversely affected by the proposed action. The proposed action has potential to adversely affect least terns, but as we mentioned in our October 5, 2004, letter, compliance with Section 7 of the Endangered Species Act of 1973 (ESA) is being addressed in an existing formal consultation. The Corps currently is reviewing a draft biological opinion for that consultation.

However, we are confused by some comments in the Draft EA. The Mitigation Plan proposes to provide high-flow releases every 2 to 3 years to enhance least tern nesting habitat. This is contrary to what was previously included in the Corps' proposed action for the section 7 consultation. Also, the Service does not agree that the proposed action would create "additional nest areas for whooping cranes." Whooping Cranes do not nest in Oklahoma and we do not think that project-related reductions in lake elevations would create wetlands suitable for nesting.

Cumulative Impacts

This section of the Draft EA simply states that no cumulative impacts are anticipated; however, no justification is provided for this statement. The Service does not agree that there are no cumulative impacts and we do not consider this adequate compliance with NEPA. Potential impacts to fish and wildlife resources are not limited to the area at Lake Texoma. The proposed action clearly has potential to boost urban and industrial development at or near areas receiving the reallocated water. It also is likely that this reallocation of water to water supply would encourage additional requests for reallocation in the future. We expect conflicts related to competing uses of water stored at Lake Texoma to increase over time (even with existing allocations). Water storage capacity at the reservoir has declined from 3,132,293 acre-feet in 1942 to 2,516,232 in 2002 (at 617 feet above MSL) and some of that storage is not available for withdrawal. The reservoir will continue to lose storage capacity as it fills with sediment over time and the proposed 450,000-acre-feet of water supply storage will become an increasing percentage of the remaining usable capacity.

Water supply is a high priority use and once dependent on this water supply, municipal demand for this water is unlikely to decrease. Compromises to reduce water withdrawals during drought periods with low reservoir water levels may be less likely to occur with water allocated for water supply relative to allocations for hydropower. The Service believes that the proposed reallocation would

Mr. Nolan

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increase conflicts with, and impacts to, fish and wildlife resources and recreational uses at Lake Texoma. The Service suggests that the Draft EA address the following issues:

1. Potential growth of communities or industries that would use the reallocated water and impacts to fish and wildlife habitat related to that growth.
2. Potential impacts to recreational use on Lake Texoma and the tailrace.

Mitigation Plan

We question the accuracy of some statements in the Mitigation Plan section (see our comments related to high flow releases for least tern habitat in the Threatened and Endangered Species Section) and all mitigation measures mentioned in the Draft EA already exist with the No Action Alternative. The Draft EA does not provide any new mitigation for impacts related to the proposed action.

Coordination with the Lake Texoma Advisory Committee

The Service is a member of the Lake Texoma Advisory Committee (Committee) and would consider this type of action to be appropriate for review by this Committee. Potential impacts to fish and wildlife resources and related recreation are apparent and the Committee was formed to provide advice to the Corps on such proposed actions.

The Service appreciates the opportunity to provide comments and we look forward to further coordination on the proposed action. If you have any questions, please contact Kevin Stubbs at 918-581-7458, extension 236.

Sincerely,



Jerry J. Brabander
Field Supervisor

cc: Director, ODWC, Attn: Natural Resources, Wildlife, and Fisheries Sections, Oklahoma City, OK
Director, TPWD, Austin, TX
USFWS, Arlington ESFO, Arlington, TX
USFWS, Tishomingo NWR, Tishomingo, OK
USFWS, Hagerman NWR, Sherman, TX

**NORTH TEXAS MUNICIPAL
WATER DISTRICT**

Regional Service Through Unity

February 21, 2005

Mr. Larry Hogue, P.E.
Chief, Planning, Environmental and Regulatory Division
United States Army Corps of Engineers - Tulsa District
16545 South 101st East Avenue
Tulsa, OK 74128

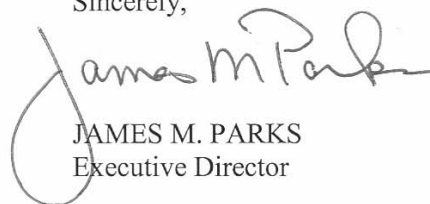
Re: Environmental Assessment Report -- Lake Texoma Reallocation

Dear Mr. Hogue:

The North Texas Municipal Water District (the "District") has reviewed the above-referenced environmental assessment, USACE Contract No. DACA56-02-D-2002, dated January 2005. In so doing, the District agrees with the assessment that there will be no significant adverse effects on Lake Texoma as part of the USACE's action in reallocating conservation storage in the lake from hydropower to municipal use. Further, the District would like to emphasize its support of this project, and to request that it be included on the notice list provided as Attachment A in the report.

The District appreciates the USACE's activities in implementing the Water Resources Development Act of 1986, and looks forward to completion of the final reallocation study. Should you have any questions, please contact Robert McCarthy, Special Projects Coordinator, or my office.

Sincerely,



JAMES M. PARKS
Executive Director

JMP/RMM/bh

505 E. Brown St., P.O. Box 2408, Wylie, Texas 75098-2408 Telephone: 972/442-5405 Fax: 972/442-5405



Department of Energy
Southwestern Power Administration
One West Third Street
Tulsa, Oklahoma 74103-3519

February 10, 2005

Stephen Nolen
Chief, Environmental Analysis and Compliance Branch
Planning, Environmental and Regulatory Division
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609


Dear Mr. Nolen:

This letter is in response to a U. S. Army Corps of Engineers' Tulsa District (SWT) letter dated January 19, 2005, concerning the Environmental Assessment (EA) and reallocation study on the reallocation of 300,000 acre-feet of conservation pool storage at Lake Texoma. The letter requests Southwestern Power Administration's (Southwestern) comments on the EA.

The letter states that all comments should be received by SWT within 30 days of January 19, 2005. Southwestern has begun to diligently review the EA and make comments, but it has determined that more time will be needed to address all of the issues concerning hydropower in this EA. Therefore, to review the EA thoroughly, Southwestern requests a time extension of 45 days beyond the original comment period to submit comments. Southwestern anticipates having comments to SWT on or before April 4, 2005.

Please contact Mr. Marshall Boyken, (918)-595-6646 or marshall.boyken@swpa.gov, if you have additional questions concerning our request.

Sincerely,


Forrest E. Reeves
Assistant Administrator
Office of Corporate Operations



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February 10, 2005

Mr. Stephen L. Nolen, Chief
Environmental Analysis and Compliance Branch
Tulsa District, Corps of Engineers
1645 South 101st East Avenue
Tulsa, Oklahoma 74128

Re: Draft Environmental Assessment for Lake Texoma Storage Reallocation Study

Dear Mr. Nolen:

Staff engineers and scientists of the Texas Water Development Board (TWDB) reviewed the Draft Environmental Assessment (DEA) for the Lake Texoma Storage Reallocation Study dated January 2005 and concur with the draft finding of no significant impact with the proposed action, reallocation of 300,000 acre-feet of storage volume from existing use for hydropower generation to proposed use for water supply. Texas could use up to 150,000 acre-feet of the new water supply storage.

Based on information presented in the DEA, the reallocation is not anticipated to adversely impact the lake and riverine fishery, or shoreline or terrestrial habitat. The proposed action was modeled and shown to cause minor changes to frequency and duration of existing lake levels and downstream flow rates. The changes are anticipated to result in minor adverse impact to downstream and terrestrial habitats. The TWDB completed a lake hydrographic survey in 2002 which showed a 2.5 percent loss in storage between 1985 and 2002. The proposed action is not anticipated to increase bank caving or erosion that has potential to reduce storage volume.

Water reallocation is a recommended strategy in the 2002 State Water Plan and the TWDB supports innovative ways to develop new water supplies while minimizing degradation to the environment. If we can assist you further, please contact me at 512-936-0813 or Dr. Barney Austin, at 512-463-8856.

Sincerely,

Bill Mullican

Bill Mullican
Deputy Executive Administrator
Office of Planning

Our Mission

To provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas.

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February 18, 2005

VIA EMAIL

Mr. Stephen Nolen
Chief, Environmental Analysis & Compliance Branch
Tulsa District Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK 74128-4629

Re: Draft Environmental Assessment of the Lake Texoma Storage
Reallocation Study

Dear Mr. Nolen:

As the President of Rayburn Country Electric Cooperative, Inc., ("Rayburn Country") I am writing to provide preliminary comments on the Draft Environment Assessment ("Draft Assessment") for the reallocation of storage at Lake Texoma. Rayburn Country purchases capacity and energy provided by the Denison Dam at Lake Texoma pursuant to a long-term contract with the Southwestern Power Administration ("SWPA"). Rayburn Country has historically followed changes to the operations at Lake Texoma because the reallocation of storage could adversely affect the generation of the hydropower at Denison Dam.

In light of Rayburn Country's longstanding interest, we have begun to review the Draft Assessment but cannot provide extensive comments because we just received notice from you of this ongoing process. I understand that the Southwestern Power Administration ("SWPA") and Tex La Electric Cooperative of Texas, Inc ("Tex-La") have requested an extension to provide comments. We join in that request so that a comprehensive record can be developed on this proposal.

In the meantime, Rayburn Country notes that the Draft Assessment has proposed an action that appears to exceed the Corps' authority to reallocate storage. Further, concerns still exist whether the Corps has adequately considered alternative actions for providing water supply from Lake Texoma by relocating intake pipes below the penstocks and thereby minimizing hydropower loss and reducing the need to purchase the full amount of the requested storage. Because the Draft Assessment fails to account for this alternative, Rayburn Country believes the Draft Assessment does not comply with

Mr. Stephen Nolen

Page { PAGE }

the statutory and regulatory requirements of the National Environmental Policy Act ("NEPA").

Authority to Reallocate Storage

The Water Supply Act of 1958 (WSA") limits the authority of the U.S. Army Corps of Engineers ("Corps") to reallocate storage if the reallocation will seriously affect authorized project purposes and require a major operational change. The Corps' own regulations suggest that these triggers are met when the lesser of fifteen percent of the total storage capacity or 50,000 acre feet are to be allocated from storage devoted to authorized purposes.¹ When such limits are reached, the Corps must seek and receive the authorization from Congress for the reallocation.

In 1986 Congress authorized the Corps to allocate a total of 300,000 acre-feet of storage for water supply purposes. As set forth in Section 838 of Public Law 99-662:

The project for Denison Dam (Lake Texoma), Red River, Texas and Oklahoma, authorized by the Flood Control Act approved June 28, 1938 (52 Stat. 1219), is modified to provide that the Secretary is authorized to reallocate from hydropower storage to water supply storage, in increments as needed, up to an additional 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Texas and up to 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Oklahoma.

The Draft Assessment explains that a total of 450,000 acre-feet of storage would be allocated from the hydropower pool to water supply.² As the Draft Assessment correctly notes that "[w]ater supply at Lake Texoma was not an original project purpose" the proposed reallocation exceeds the cap of 300,000 acre feet set forth by Congress. The proposed action can only occur when Congress passes legislation to reallocate the additional 150,000 acre-feet. In the alternative, the Corps only has the authority to reallocate 150,000 acre-feet. As set forth in the Draft Assessment, however, the Corps' proposed action violates federal law and cannot proceed as currently designed.

Consideration of Alternatives

The Corps has an obligation under NEPA to consider alternative courses of action in lieu of the proposed action. Rayburn Country notes that the Corps has contemplated only one other possible alternative, declining to provide the storage for water supply. This view discounts other possibilities such as locating water intake pipes below the dam penstocks to remove water from the river downstream of the project. This action could minimize the impact on hydropower operations and reduce the amount of storage needed for water supply purposes. The Corps has failed to consider this possibility, which would

¹ Engineer Regulation 1105-2-100 at E-215.

² See Section 3, Proposed Action, p. 4.

Mr. Stephen Nolen
Page 3

appear to violate its obligations to consider alternatives to the proposed action. Rayburn Country believes such study is warranted in the next Draft Assessment that the Corps will generate.³

Preserving Hydropower Benefits

In closing, please note that Rayburn Country does not per se oppose the use of storage at Lake Texoma for water supply purposes. To the extent that hydropower benefits are preserved, as Congress intended in P.L. 99-662, Rayburn Country has no objection to the reallocation of storage within the authority granted to the Corps by Congress. On behalf of the Rayburn Country members, I thank you for your consideration of these comments.

Sincerely,

/s/

John Kirkland
President
Rayburn Country Electric
Cooperative, Inc.

³ As noted above, the current Draft Assessment proposes an action that facially appears to exceed the Corps' current authority and cannot legally proceed as designed.

Sturdy, Jerry C SWT

From: Nolen, Stephen L SWT
Sent: Monday, August 29, 2005 4:04 PM
To: Sturdy, Jerry C SWT
Subject: FW:

Include in comments section for Texoma EA.

From: Nolen, Stephen L SWT
Sent: Friday, March 04, 2005 1:38 PM
To: 'Steve Reider'
Subject: RE:

Mr. Reider:

Effects on lake levels resulting from this action are described on p. 23 of the Draft Environmental Assessment. This document can be found at:

<http://www.swt.usace.army.mil/library/libraryDetail.cfm?ID=175>

I trust this will answer your questions. Thank you for your interest in this matter.

Steve Nolen

From: Steve Reider [mailto:SteveReider@GreaterMetroInt.com]
Sent: Wednesday, March 02, 2005 6:23 PM
To: Nolen, Stephen L SWT
Subject:

Stephen, What effect on lake level will occur from hydropower storage to water supply storage? Hopefully it won't be lower as lower levels affect golden alga outbreaks such as last winter when lake was so low.



April 7, 2005

VIA EMAIL

Mr. Stephen Nolen
Chief, Environmental Analysis & Compliance Branch
Tulsa District Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK 74128-4629

Re: Draft Environmental Assessment

Dear Mr. Nolen:

In February, I submitted comments on the Draft Environmental Assessment of the Lake Texoma Storage Reallocation Study ("Draft EA") on behalf of Rayburn Country Electric Cooperative, Inc. ("Rayburn Country"). Around that time, we learned from your offices that the deadline to submit comments had been extended to April 7, which has given the Southwestern Power Administration ("SWPA") the opportunity to comment on the Draft EA which Rayburn Country supports with only one notable exception. In addition, Rayburn Country asks to follow these comments with a more detailed discussion of the underlying Corps authority to reallocate storage. Just today we received copies of Water Storage contracts from the U.S. Army Corps of Engineers ("Corps"), which may reveal the limitations of the Corps' authority to reallocate storage at Lake Texoma.

With regard to the SWPA comments we strongly support the conclusions that the Draft EA fails to include a suitable analysis on the impact on hydropower production at Lake Texoma. This is a notable omission and leads to additional infirmities within the Draft EA as it fails to consider a host of alternative approaches to the reallocation. Further, we believe SWPA has appropriately touched upon the issue of how much a contracting entity should pay for storage at Lake Texoma. The underlying authority for the reallocation, the Water Resources Development Act of 1986 ("WRDA") states that existing hydropower uses must be kept whole from the loss of storage from the hydropower pool.

Still, Rayburn Country has lingering questions regarding the authority of the Corps to allocate the amount of storage suggested in the Draft MOA. As we explained in our February 18 letter, WRDA set forth the limitations on the amount of storage that the Corps could reallocate from the hydropower pool at Lake Texoma. As set forth in section 838:

Mr. Stephen Nolen

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The project for Denison Dam (Lake Texoma), Red River, Texas and Oklahoma, authorized by the Flood Control Act approved June 28, 1938 (52 Stat. 1219), is modified to provide that the Secretary is authorized to reallocate from hydropower storage to water supply storage, in increments as needed, up to an additional 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Texas and up to 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Oklahoma.

Rayburn Country disagrees with the assumption made by SWPA that there was an existing 150,000 acre-feet use in place at the time that WRDA 1986 was passed. The language of the law explicitly indicates that Texas interests are entitled to an amount which is "up to" an additional 150,000 acre-feet of storage. It appears that both the Corps and SWPA believe this section provides a 150,000 acre-feet baseline from which 150,000 acre-feet additional storage can be reallocated. This overlooks the insertion by Congress of the words "up to." If Congress intended for the Corps to use a 150,000 baseline, it would have omitted these small yet legally significant terms from the statutory language.

Rayburn Country believes the best way to determine the proper baseline is through an examination of the water supply or water storage contracts in effect when WRDA passed. Earlier today we received over 144 pages of contracts that we have not yet been able to examine fully. We believe a more comprehensive record can be developed if these contracts are reviewed. Therefore, we ask for the opportunity to supplement the record with an analysis of the contracts that were just provided today.

Nonetheless, the uncertain nature of the Draft EA continues to trouble Rayburn Country. In our review, we have determined that there are no pending demands for the storage at Lake Texoma other than a request for 50,000 acre-feet of storage. The Draft EA appears to mismatch the Corps proposed agency action and the scope of the Draft EA. If and when there is a subsequent request for storage, the Environmental Assessment, as required by the National Environmental Policy Act ("NEPA"), will be stale. As each future reallocation could constitute a major federal action, the Corps has a responsibility to conduct a timely NEPA analysis for such future actions.

In our further review of the Draft EA, we conclude that it suffers from several deficiencies, most notably the absence of a completed reallocation study. Perhaps the overall process would be best served if the Corps suspended the Draft EA and finished the reallocation study. We encourage your offices to consider seriously this option. In the meantime, I thank you again for the opportunity to supplement our earlier comments.

Sincerely,

/s/

John Kirkland
President, Rayburn Country
Electric Cooperative, Inc.

